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## GENERAL SERVICES ADMINISTRATION

PUBLIC COMMENT MEETING  
DRAFT ENVIRONMENTAL IMPACT  
STATEMENT FOR THE  
U.S. PATENT AND TRADEMARK OFFICE CONSOLIDATION

Wednesday, April 29, 1998

Aurora Hills Public Library  
Arlington, Virginia

The hearing in the above-entitled matter  
was convened, pursuant to notice, at 7:15 p.m.,

BEFORE:

For the General Services Administration:

CARL WINTERS, Project Manager

For the Patent and Trademark Office:

Brigid Quinn

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P R O C E E D I N G S

CHAIRMAN WINTERS: Good evening and thank you for coming to our public meeting tonight. I am Carl Winters from the General Services Administration (GSA), National Capital Region. I am the GSA Project Manager for the Patent and Trademark Office (PTO) Consolidation Project.

GSA is the procurement agent for this project, and as such, we must see that the project complies with the National Environmental Policy Act of 1969 (commonly referred to as NEPA) as well as the National Historic Preservation Act (specifically Section 106 of the NHPA). To satisfy all of the former and portions of the latter, GSA is preparing the Environmental Impact Statement (EIS) for this project.

Almost one year ago on June 4th at Aurora Hills and June 5th at Alexandria Courthouse, GSA initiated the EIS process in public scoping meetings. It was at that time in the consolidation project that the government knew which alternative sites would be competing in the second phase of the

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procurement of up to 2.4 million rentable square feet of leased office space for the PTO. The comments from those two public meetings, along with submitted written comments, were used as guidance for investigation of specific issues that respondents wanted to be included in a study of impacts to the environment that may be caused by our project.

The Draft Environmental Impact Statement (DEIS) was then prepared under GSA contract by a team of consultants led by EDAW, Inc., utilizing the specific recommendations of the public scoping process as well as general knowledge of the standard EIS content and scope. The time it took for preparing this DEIS was lengthened by the demands of our procurement. The specific designs for each offer were not known until late October 1997, and there were subsequent iterations with all the offerors to ensure that we had the correct information to include in the DEIS. The DEIS was released on April 3, 1998 for a 45-calendar day comment period that started official on April 10th

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and ends May 26, 1998.

This public meeting is another part of the EIS process. We are here to listen to your comments on the DEIS. Your comments will be addressed in the Final Environmental Impact Statement (FEIS). If you do not wish to speak tonight you may submit written comments postmarked no later than May 26, 1998. The comments can also come via facsimile or e-mail, but no later than May 26th.

We estimate that it will take until the first part of August 1998, to collect and incorporate your comments, review, print and release the FEIS. At the release of the FEIS there will be a 30-calendar day, no action period. At the end of this no action period, a Record of Decision (ROD) will be prepared that explains GSA's decision on the project. Due to procurement sensitivities, the ROD will be released simultaneously with lease award which is scheduled for October 1998.

The primary purposes of an EIS are: (1)

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to provide full and fair discussion of signification environmental impacts, and (2) to inform decision makers and the public of the reasonable alternatives which could avoid or minimize adverse impacts, or enhance the quality of the human environment. By itself, the EIS is not a decision making document. Rather, it is one tool that the government will use to make the final decision regarding which offer is successful. The offers are also being evaluated on site infrastructure and public transportation availability; proposed building designs; architectural, development, and operations and maintenance teams; and price among other factors.

The EIS addresses several topics including earth resources, land use and planning, socio-economic resources, cultural and aesthetic resources, transportation impacts, environmental health, and urban systems. Each of these is analyzed in the separate phases of: (1) pre-occupancy (existing conditions), (2) during construction, and (3) post-occupancy. There are

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numerous federal, state, and local agencies, in addition to the general public that will review and comment on the EIS to ensure that the document conforms with environmental and historic preservation standards and goals.

I have now given you a sketch of what an EIS is and the purpose it serves; described the EIS process, where we are in that process and a schedule to complete the process; and briefly touched on some of the procurement steps that have occurred. As you may have noticed, there is one less site discussed in the DEIS than we proposed in the public scoping meetings held last year. On March 18, 1998, Potomac Yards withdrew from the competition. Therefore, there are currently three alternative sites under consideration: (1) Crystal City in Arlington County, (2) Carlyle and (3) Eisenhower Avenue, both in Alexandria. The EIS also addresses the No Action alternative.

Anyone can speak tonight to comment on the Draft EIS, but you must first sign in on the speakers' sheet located at the entrance of the

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room. Speakers will be called in the order they signed in. Also, please take time to inspect the presentation boards stationed in the back of the room. These are enlarged versions of the graphics included in the DEIS. There are copies of the DEIS available at the back of the room. Please be sure to sign for these so that we know who obtained copies.

Now, I would like to introduce Brigid Quinn of PTO.

MS. QUINN: Good evening everyone. I am the Deputy Director of Public Affairs for the Patent and Trademark Office. I want to thank all of you for coming out this evening. For those of you who may not know, the Patent and Trademark Office is a Bureau of the U.S. Department of Commerce. The mission of the Patent and Trademark Office is to enhance industrial and technological progress in the United States by promoting the use of intellectual property rights, patents, trademarks and copyrights as a means of achieving economic prosperity.



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The Patent and Trademark Office does this by processing patent applications (over 120,000 patents were issued last year); registering trademarks (more than 112,000 were registered last year); and disseminating information about patents and trademarks.

The Patent and Trademark Office, unlike most government agencies, is entirely funded by user fees, therefore, we have a unique responsibility to ensure the users receive efficient cost-effective services, and products that meet their needs and expectations.

I am here tonight to listen to your views and to ensure that they are known to the Deputy Secretary of Commerce and Commissioner of Patents and Trademarks. I am also here to assure you that the Patent and Trademark Office prides itself on being a good neighbor and will work with the citizens in whatever community we are located to ensure that we will always be a good neighbor. Thank you.

CHAIRMAN WINTERS: For the meeting

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tonight, the government is here to listen. We are not here to present findings, nor are we here to debate or resolve issues that you may raise tonight. We will take all the issues that you raise into consideration, and see that they are addressed in the FEIS. We are not here to answer any specific questions, except for the review process itself, nor will we discuss the procurement in any more detail. We are ensuring that your comments are recorded by having a transcriber here to record your verbal testimony. The transcript of tonight's meeting will be included in the final EIS. We will also take any written comments that you may want to enter into the record tonight.

Now let us begin with the first speaker from the sign-in sheet. When you come forward, speak directly into the microphone. The first speaker is Christopher Zimmerman.

MR. ZIMMERMAN: Good evening. For the record, I am Christopher Zimmerman and I am Chairman of the Arlington County Board. On behalf of the Board and the people of Arlington, I would

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like to welcome you here tonight and thank you for this opportunity to comment on the draft Environmental Impact Statement on the proposed consolidation of the Patent and Trademark Office.

Arlington has been home to the PTO for 30 years and has seen it grow to one of our largest employers, with over 5,000 employees in 1.9 million square feet of office and special-purpose space.

Arlington has worked hard to create a model urban area in Crystal City and is proud to have the PTO as a major federal presence. In this effort, we have forged a partnership with the Charles E. Smith Company that transformed our plans and policies into the Crystal City of today. As we approach the final stage of this consolidation process, I can assure you that the Arlington County Board will work closely with the GSA, PTO, and with the Charles E. Smith Company to achieve the best possible outcome for the PTO.

We have reviewed the draft statement in detail, as well as the issues that we raised at the June 4, 1997 Environmental Scoping Session, and

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have compared it to prior EIS which dealt with some of the same sites under consideration today. Based on this review, I am submitting today our technical review comments on the draft statement. In doing so, I will say that we reserve the right to submit additional comments on or before the May 26th closing of the comment period.

This evening I would like to highlight some of the major concerns that we have with respect to the draft statement and I hope that they will shape the form and substance of the final Environmental Impact Statement.

First is an issue that we raised in the Scoping Session for the EIS, but which has not been addressed in the draft, and that is compliance with Executive Order 12072. This Executive Order states, "Except where such selection is otherwise prohibited, the process for meeting Federal space needs in urban areas shall give first consideration to a centralized community business area and adjacent areas of similar character." Another issue we raised, but which also is not addressed in

5.2-1

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the Draft Statement, is the operating inefficiency caused by lengthened travel times, whether by transit or automobile, for PTO employees and clients who need to access other federal agencies in the Federal core.

8.1-1

Secondly, in terms of land use planning, the Draft Statement finds inconsistencies between the Crystal City site proposal and the Arlington General Land Use Plan, as well as the density envelope. I can assure you that to the extent technical discrepancies may exist, they are minor and well within the bounds of our normal site plan review process.

5.2-2

The analysis of fiscal impacts in the Draft Statement is incomplete and does not provide a basis by which true cost comparisons can be made between the candidate sites. Costing is limited to selected roadway improvements and no information is provided on the cost associated with other required environmental mitigation measures. Absent this "bottom line," how can a comparison be made between the candidate sites regarding the cost of

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developing the PTO campus? Additionally, revenues are only presented in terms of real estate taxes on land and improvements. This truncated approach makes it impossible to establish the "net" fiscal benefit of the PTO campus to the host municipality.

6.2-2

With respect to transportation impacts, there are substantial differences between the Crystal City site and the alternative sites in terms of incremental traffic generation, the extent and cost of required roadway improvements, travel times for PTO employees and clients by auto and transit. These differences between the Crystal City site and the alternatives are compounded by the uncertain status of the Woodrow Wilson Bridge project. This large-scale project for which funding has yet to be secured will heavily impact the primary access points to the alternative sites and could be a major disruption for PTO at those locations.

8.1-1

8.1-9

8.1-3

In the area of air quality, the Draft Statement frankly glosses over impacts that work against important regional goals to reduce mobile

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source emissions and ozone-generating compounds. The data in the Draft Statement shows that relocation would entail a 13 percent reduction in transit usage and an increase in ozone-generating compounds of five times that associated with the Crystal City site, but there are no direct impacts recognized in the analysis. All this at a time when the region has been designated by the Federal Government as a nonattainment area for ozone. We believe the deficiencies in the Draft Statement make it impossible to establish conformity with the standards of the Clean Air Amendments of 1990, which, among other things, require federal agencies to demonstrate that their actions "Will not increase the frequency or severity of any existing violations of ambient air quality standards."

9.1-1

In closing, let me reiterate Arlington County's commitment to making Crystal City the best site for the PTO campus. Our review of the current DEIS shows that there is not enough information at this point by which to make an intelligent, informed decision on the PTO consolidation. We

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hope the Draft Statement will undergo the necessary revisions to address these shortcomings and that the final Environmental Impact Statement will offer the type of analysis that will allow true comparisons between the candidate sites to be made, evaluated, and justified. Thank you very much.

CHAIRMAN WINTERS: Thank you. The next speaker is Michael Wilson.

MR. WILSON: Good evening. Thank you for this opportunity. I am Michael Wilson, Assistant Superintendent of the George Washington Memorial Parkway, National Park Service. I am here out of a concern that we have at the Parkway for the close proximity of the proposed Crystal City site to the Parkway boundary. That particular area of the Parkway is one of the more narrow along our borders and we see from the current Patent and Trademark Office building that is near this location, that there is quite a visual impact, even with the tree planting which certainly softens the view. The height of the proposed building would certainly stand or loom tall above any additional tree

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planting that might occur.

So we would like to encourage you to consider another location. If you do determine that the Crystal City site is the best location for the Patent and Trademark Office, we would ask that you give serious consideration to increasing the setback. What you have now under the proposal is quite close to our boundary.

7.2-4

We also would encourage, if you do choose that site, that you give us an opportunity to work with you in terms of color selection, and also we would ask that you give consideration to not having a sign on that side of the building facing the Parkway that looms as large as the one that is on the existing facility.

7.2-4

We do thank you very much for this opportunity and please contact us so that we might discuss it further if you do choose that site. Thank you.

CHAIRMAN WINTERS: Thank you. Nicholas Yost.

MR. YOST: We appreciate GSA's invitation

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to the Charles E. Smith on whose behalf I am testifying to appear here today. I am Nicholas Yost of the law firm of Sonnenschein Nath & Rosenthal representing the Charles E. Smith Company.

Let me start with some preliminary observations. First, we too would like to reserve the right to have a fuller submission on May 26th with a month's more time to go into it.

Second, the current DEIS is characterized not so much by misdirection as by omission and failure to take the "Hard look" demanded by NEPA. Time and time again, important issues are briefly mentioned, but then neither explored nor their implications fully examined. As it now stands, the DEIS has a long way to go before it becomes a legally defensible document. Indeed, the shortcomings of the DEIS in several critical respects are such as to preclude meaningful analysis as we will detail later, and require a revised Draft EIS to be prepared and circulated for comment prior to proceeding to a Final EIS.

1-1

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Third preliminary comment is that this is a somewhat unusual case in that GSA is not writing on a blank slate. It is writing on a slate on which it has written before, GSA has prepared EIS' and other NEPA documents on either identical or very proximately close sites in connection with other projects. An affect of that is that what was said in the prior EIS' has to be explained in the current EIS. Either accepted as truth, or explained why it is inapplicable or no longer the case. I am referring particularly to the DEIS--the supplemental DEIS and the FEIS on the Naval Systems Command consolidation in the early 90's.

1-5

Substantively, we will address five points: First, structural failings under NEPA. Basic shortcomings that go to the heart of the document's legal sufficiency under the Act; second, hazardous waste; third, traffic; fourth, archeology; fifth, land use.

I am going to, clearly in the interest of time, summarize the fairly lengthy statement which we have submitted, but I want to touch briefly on

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each of these.

First, NEPA's structural failings.

Underlying any environmental impact statement is the statement of purpose and need. What is it that an Agency is trying to achieve? And then, you look at alternatives which in turn achieve or aimed at achieving those ends, that purpose and need. But if the person and need fails, then the whole EIS fails. And the purpose and need in this case is defective. It essentially says that there are four grounds for a presumed need on the part of the GO: American's with Disabilities Act; Heating Electrical and Elevator Systems; Operational inefficiencies associated with six buildings rather than eight; and the need for approximately 2 million occupiable square feet.

2-1

In fact, in order to be achieved, none of these needs require selection of the expensive action alternatives described in the EIS. With respect to ADA, some of the existing buildings are almost fully compliant and several other buildings will need modifications. In some cases, the Smith

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Company has proposed those changes at Smith's expense to bring the buildings more fully into compliance, but GSA and PTO have elected not to have that work done.

With regard to fire safety, HVAC electric and elevator systems, the Smith Company has offered to make a number of major changes needed in the Crystal Plaza complex occupied by PTO, but GSA and PTO have declined that offer. Smith has agreed to make these changes at its expense if GSA and PTO will extend the lease by five years.

Finally, Smith has already provided GSA and PTO with over \$6 million dollars in 1996 to make improvements to PTO space or the building infrastructure.

Third, with respect to building consolidation, the Smith Companies have told GSA and PTO they would so plan leases in their buildings as to give the PTO full buildings and reduce the number of buildings from 16 to 8.

And fourth, with respect to space, the Smith Companies have committed to GSA and PTO to

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make available the full space contemplated by the DEIS within the time frame set up there in full single-user approximate buildings. In short, the very criteria set out in the DEIS' purpose and need show that all of the stated needs can be met under the "No action alternative" with the ongoing and routine developments described above.

A second deficiency associated with a purpose and need discussion arises out of the constraints imposed by the specifications. Under NEPA one cannot limited the scope of consideration by self-imposed limitation. Here, the underlying specifications, the FSO requirements, both lead to unnecessary costs and distinctive and excessive technical requirements which put existing buildings at an overwhelming disadvantage without any corresponding benefit to PTO's ability to fulfill its mission.

2-2

In brief, the SFO stacks the deck against the use of existing buildings, hardly the encouragement that we use which NEPA in its implementing regulations favor.

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The third structural failing under NEPA is the inadequate discussion of the "No action" alternative. We deal with this at some length here. Basically, the requirement in NEPA is that alternatives, including the "No action alternatives" be rigorously explored and objectively evaluated. But the "No action" alternative gets relegated to half a page at a place where the action alternative gets 23 pages. This simply is not seriously considered.

3-1

Fourth, and relatedly, the discussion alternatives is similarly flawed. While the alternatives considered include that of "Extend current leases," that is only a one paragraph discussion and does not begin to rigorously explore and compare the impact and opportunities, again, for the same reasons I have discussed before.

3-2

The second major area of deficiency in the DEIS relates to its discussion of hazardous waste. The Carlyle site particularly shows that while portions of the site have been remediated according to the DEIS itself, one block of it has not been

9.3-1

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documented as evaluated. PCBs are shown in and above the area. In another area covering a portion of two blocks, it is also described as not having been examined and sampled for hazardous materials. The DEIS itself says, "It is unknown whether these items were removed."

In another section, it says, "It is not clear that all potentially contaminated areas are being addressed in the developer's assessment." The Eisenhower site, while less conspicuously the locale of past contamination, still has its share of contamination worries. The DEIS says, "The nature and extent of dumping activities at the Eisenhower Avenue site remain a concern."

9.3-4

9.3-1

9.3-8

At the request of the Smith Companies, SCS Engineers who have done hazardous waste work at numerous sites immediately adjoining these sites has done an interim report and will later do a final report which is also attached to our statement. But among the conclusions that it reaches are: Clean-up levels for the Carlyle site appear to have been based on the absence of

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groundwater contamination, but the groundwater is contaminated.

The proposed construction at the Carlyle site, if found to be hazardous, would require excavation of approximately 60,000 cubic yards of soil and the estimated cost of clean-up would be in the range of \$6 million dollars.

9.3-3

The Carlyle site for reasons which are set out in Attachment (C) to our submission, also is a candidate for an "Open dump" regulatory treatment under the Virginia Solid Waste Management Regulations.

9.3-4

The proposed Eisenhower site, if further investigation, which is clearly needed, takes place there and shows that the soil is hazardous waste, disposal would cost in order of \$194 million. In other words, we are talking about very large numbers here, but based on information which has yet to be fully collected and developed.

9.3-7

The third major area of deficiency in the DIS relates to traffic. The Washington Post has run a series of recent articles which I am sure

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have invited everybody's attention to traffic in that very area connected with the Woodrow Wilson Bridge. The Woodrow Wilson Bridge is described by the Maryland Transportation Secretary as, "The major bottleneck on the East Coast." Traffic loads are more than twice capacity.

8.1-3

The Carlyle and Eisenhower Avenue sites are now put forward which will further overburden an already overburdened system.

Here, I want to return to the discussion of the EIS as prepared by GSA in the early 1990s in connection with the then proposal for the Naval Systems Command consolidation. The 1990 draft EIS estimated traffic mitigation at \$130 million dollars for the Eisenhower Avenue site. The current DEIS recommends \$14.6 million. To say this disparity invites questioning is grossly to understate the case. If there is an explanation and either there is an explanation or there is not. If there is, it must be fully and objectively set out. If there is not, the numbers cannot be trusted and certainly cannot form the basis for

8.7-1

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decision-making.

The 1992 SDEIS concluded that even without the Navy project, the roadway system for movement in and out of the eastern end of Eisenhower Valley will be dysfunctional.

8.3-1

The SDEIS at the time concluded that the greatest cumulative impact is related to traffic. The present DEIS simply fails to analyze these cumulative impacts which is a fatal flaw.

8.3-1

Next, and relatedly, the DEIS does not start by analyzing the transportation projects that are needed to bring the road system up to acceptable standards, even before proposing a new project. These shortcomings have the effect of omitting the discussion of cumulative impacts required by NEPA. We also note one curious omission from the traffic analysis, the absence of data on traffic generated by users of the PTO, as distinguished from and addition to that generated by the employees which is discussed.

8.3-1

8.1-4

8.1-6

Finally, with respect to traffic, the study area slights Old Town Alexandria and its

8.1-4

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streets and residential areas.

With respect to archeology, the recommended scheme for handling archeological impacts does not comport with NEPA. That law is an environmental "look before you leap" law. First you look. Then you decide. DEIS, however, with one sight relies on a memorandum of understanding between the developer and the City of Alexandria, to which either the State Historic Preservation Officer nor the Advisory Council on Historic Preservation appear to be parties to take care of any problems that may arise.

7.1-4

For the two alternative sites, the DEIS recommends archeological phase one testing as mitigation. Again, this turns NEPA on its head. First you decide, the DEIS would have us believe, then you test. That is simply wrong under NEPA. First you test, then informed by the results, you decide.

At the request of the Smith Companies, an initial review was conducted by Joseph Hopkins Associates, concerning the PTO DEIS from the

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archeological aspect. That document is also attached and submitted and marked as Attachment (D). Among the conclusions in that document are that both the Carlyle and Eisenhower Avenue sites are characterized by fill on low lying land, which creates a good potential for survival of important archeological resources beneath the fill.

7.1-3

7.1-5

Land Use. The next major deficiency relates to local land use controls. With respect to the Carlyle site, according to the DEIS, the proposed project would not satisfy several guidelines of the Duke Street Coordinated Development District. As such, it is inconsistent with applicable zoning requirements. It is also inconsistent with the applicable Small Area Plan and with the National Capital Planning Commission's Comprehensive Plan policies.

5.2-5

Similarly, the Eisenhower Avenue project would not satisfy several guidelines of the Eisenhower Avenue Coordinated Development District. One of the buildings would exceed what is authorized under the applicable Small Area Plan.

5.2-8

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This project too, is inconsistent with zoning requirements and with NCPC's Comprehensive Plan policies.

There remains, in conclusion, much to be done to bring the DEIS into reviewable form. We have pointed specifically to five areas. With respect to the first area of deficiency, the structural failings that follow from an inaccurate statement of Purpose and Need and which lead to misleading evaluations of Alternatives, including the No Action Alternative. We frankly do not see how this NEPA process can survive an objective evaluation of Purpose and Need. The No Action alternative can only emerge no longer a slighted alternative, but as a preferred alternative.

With respect to the other four areas of deficiency: Hazardous waste; archeology; traffic; and land use, there is considerably more work to be done before this EIS is ready for review, even in draft form. That is why we have suggested that the law requires a revised DEIS to be prepared and circulated. Only when the questions posed there

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are fully addressed, "Rigorously explored and objectively evaluated" to use the CEQ NEPA Regulations phrase, will the DEIS be such as to lend itself to fully informed comments.

Thank you again for the opportunity to appear before you.

CHAIRMAN WINTERS: Thank you, Mr. Yost.  
Richard Hurst.

MR. HURST: Good evening. I am Richard Hurst. I am President of the Arlington Civic Association. I have not taken the time to review this document. However, I am here on behalf of the members of our community, the neighboring civic association, to let you know that the Patent Office is a welcome neighbor. They have been ever since they started to locate here I believe since 1967 and we like them in our back yard.

Two things I would like to comment on. When you get involved in terms of transportation and location, it is not only convenient for the people who actually live and work in this area, but the clients of the Patent Office that fly in from

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New York, Chicago, be they Patent attorneys or inventors, it is very very convenient for them to go from National Airport just one Metro stop over to Crystal City. So that is another aspect. I do not know if it is compared in here or not.

The other thing is with respect to Arlington County and South Arlington in general, there are many many opportunities for residential communities in the area, not only the ones that exist now, but future development which is underway.

5.3-1

So once again, I would just like to say that we find them a very favorable neighbor as our neighbor here in South Arlington. Thank you.

CHAIRMAN WINTERS: Thank you. Bill Hard?

MR. HARD: Pass, thank you.

CHAIRMAN WINTERS: Is there another sign-in sheet? Did anybody sign in on a blank?

[No response.]

CHAIRMAN WINTERS: Then, that is all the people who have signed up to speak.

Are there any questions on the process



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while we have the consultants here?

[No response.]

CHAIRMAN WINTERS: Then I guess the public meeting is adjourned.

[Whereupon, at 7:52 p.m., the public meeting was adjourned.]

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